



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The female landlord did not attend this hearing, which lasted approximately 38 minutes. The male landlord ("landlord") and the two tenants, "male tenant" and female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to speak on the female landlord's behalf at this hearing.

The hearing began at 1:30 p.m. with only me and the landlord present. At 1:38 p.m. the tenant called in and at 1:39 p.m. the male tenant called in. I informed both tenants about what occurred in their absence, as I only discussed evidence regarding service of the landlords' documents with the landlord. The hearing ended at 2:08 p.m.

The tenant confirmed receipt of the landlords' application for dispute resolution, notice of hearing and first written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application, notice of hearing and first written evidence package.

The tenants stated that they did not receive the landlords' second written evidence package. The landlord claimed that he sent it by mail on March 24, 2018 and he provided a Canada Post tracking number with the landlord's application. In accordance with sections 88 and 90 of the *Act*, I notified the tenants that they were deemed served with the landlords' second written evidence package on March 29, 2018, five days after its registered mailing. I find that the landlords served it to the forwarding address provided by the tenants, who confirmed the address during the hearing, and that the Canada Post tracking information indicated that the mail was unclaimed by the tenants. As per Residential Tenancy Policy Guideline 12, if mail is unclaimed, it is still deemed served on the party.

Issues to be Decided

Are the landlords entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain a portion of the tenants' security deposit?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 4, 2016 and ended on January 30, 2018. Monthly rent of \$2,250.00 was payable on the first day of each month. A security deposit of \$1,125.00 was paid by the tenants and the landlords continue to retain this deposit in full. Both parties signed a written tenancy agreement. Move-in and move-out condition inspections and reports were completed for this tenancy. The landlords had written permission from the tenants to keep \$150.00 from their security deposit. The tenants provided a written forwarding address to the landlords in an email on February 4, 2018. The landlords filed this application to retain the tenants' security deposit on February 8, 2018.

The landlords seek a monetary order of \$204.75 for professional carpet cleaning, plus the \$100.00 application filing fee.

The landlord testified that the tenants failed to steam clean or shampoo the carpets when they vacated the rental unit and they were required to do so using professionals as per the parties' addendum to the tenancy agreement. He said that the new tenant who moved into the rental unit after the tenants vacated, noticed that the carpet was dirty and that the tenants had not steam cleaned it, so she had it professionally done. The landlords provided an invoice for \$204.75 in the new tenant's name. The landlord stated that he paid the new tenant for this cost but he did not provide proof of same, indicating that he could do so after the hearing. He said that he could not recall when he paid the new tenant for the above cost but thought it was late February or early March 2018.

The landlord explained that although he completed a move-out condition inspection and report with the tenants, he did not realize that the carpet was dirty or required cleaning because he could not see properly since it was so early in the morning. He said that he did not notice the corners of the carpet, where the new tenant claimed she saw black hairs, as per the text messages provided by the landlords. He maintained that he did not ask for proof of the steam cleaning or shampooing from the tenants at the move-out condition inspection because he believed in good faith that they had done it. He claimed that he inquired with the company hired by the tenants to do the carpet cleaning as to whether they did any steam cleaning or shampooing and they denied doing so, saying that they only did vacuuming. The landlords provided emails from the company, indicating that the company representatives would not be testifying at this hearing.

The tenant testified that she bought a product to shampoo the carpet and did so manually on her own, without a machine on January 28, 2018. She said that she also paid a company, which was recommended by the landlords, to steam clean and shampoo the carpet on January 29, 2018. She claimed that while she did not hire the company to do a deep clean of the stains in the carpet, which she said were present when the tenants moved in, she hired them to shampoo and steam clean the carpet in their standard package rate. She explained that the landlord made no issue of the condition of the carpet when both parties conducted the move-out condition inspection and report. She said that the landlord commented on how clean the unit was during the inspection and that both parties agreed only that \$150.00 would be deducted from the tenants' security deposit for a separate issue, not the carpets.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's application for \$204.75 without leave to reapply. The landlords failed part 3 of the above test by failing to provide a receipt or other documentary evidence to show that they paid the above amount to the new tenant. The landlords had ample time to provide this evidence, given that their application was filed on February 8, 2018 and this hearing was held on September 7, 2018, almost 7 months later. The new tenant did not testify at this hearing to confirm that she received the above payment from the landlords. The male landlord did not even know when he paid the above amount, stating that it was either in late February or early March of 2018. The landlords only provided an invoice in the name of the new tenant, not the landlords' name. The landlords did not provide a receipt to show that the cost was paid by the new tenant or the landlords, just an invoice showing the balance due.

The landlords continue to hold the tenants' security deposit of \$1,125.00. Over the period of this tenancy, no interest is payable on the tenants' security deposit. I order the landlords to retain \$150.00 from the tenant's security deposit in the amount of \$1,125.00. The tenants provided written permission to the landlords to keep this amount and they agreed to this verbally during the hearing. I order the landlords to return the remainder of the deposit in the amount of \$975.00 to the tenants within 15 days of receiving this decision. Although the tenants have not applied for its return, they are not required to do so when there is a landlords' application to keep the deposit, as per Residential Tenancy Policy Guideline 17. The tenants are granted a monetary award for \$975.00.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I order the landlords to retain \$150.00 from the tenants' security deposit of \$1,125.00. I issue a monetary Order in the tenants' favour in the amount of \$975.00 against the landlords. The landlords must be served with a copy of this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlords' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 07, 2018

Residential Tenancy Branch